

May 5, 2023

445 HAMILTON AVENUE, SUITE 1206  
WHITE PLAINS, NEW YORK 10601  
914.683.1200

**VIA OVERNIGHT DELIVERY  
AND ELECTRONIC FILING**

BRIAN D. GINSBERG  
MEMBER  
DIRECT: 914.298.3028  
FAX: 914.683.1210  
BGINSBERG@HARRISBEACH.COM

Hon. Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
1 First Street, N.E.  
Washington, D.C. 20543

**RE: *Libertarian Party v. New York State Board of Elections*  
Case No. 22-893**

---

Dear Mr. Harris,

The date by which respondents must file their brief in opposition to the petition for writ of certiorari in the above-captioned matter is currently set at May 16, 2023. Pursuant to Rule 30.4 of this Court, please accept this letter as a motion by respondents to extend that date by 45 days, *i.e.*, until June 30, 2023. As explained herein, there is good cause for the extension.

*First*, not having been assigned to this case until after the petition was filed in this Court, and therefore not having participated in the matter during prior proceedings in the United States District Court for the Southern District of New York or in the United States Court of Appeals for the Second Circuit, I require the requested additional time in order to fully familiarize myself with the relevant legal issues and voluminous factual record. The requested additional time is also needed in order to adequately review and respond to the *amici curiae* brief filed several weeks ago in support of the petition.

*Second*, the requested additional time is necessary to accommodate substantial pre-existing professional obligations, including the filing of briefs and presentation of oral arguments, which significantly impair my ability to file the brief in opposition any sooner. For example, since March 13, 2023, the date on which the petition was served upon my law firm, I have been or will be responsible for, among other engagements:

- on March 13, 2023, filing a brief in opposition to retention of jurisdiction in *Lavine v. State of New York* (N.Y. State Ct. of App. Case No. APL-2023-0005);
- on March 16, 2023, filing an opening brief in *Hardy v. Hummel* (N.Y. State App. Div. 3d Dep't Case No. 535431);
- on March 29, 2023, filing a petition for review of administrative agency action in *Von Hurwitz v. New York State Dep't of Taxation & Fin.* (N.Y. State App. Div. 3d Dep't Case No. CV-23-0590);
- on March 31, 2023, filing a brief in opposition to a motion for leave to appeal in *Wilmot v. Kirik* (N.Y. State Ct. of App. Case No. M-2023-241);
- on April 10, 2023, filing a reply brief in support of a petition for review of administrative agency action *575 4th Ave., LLC v. New York City Dep't of Env't'l Protection* (N.Y. State Sup. Ct. Queens County Case No. 725911/2022);
- on May 1, 2023, filing an opening brief in *Mackiewicz v. Autumn View Health Care Facility* (N.Y. State App. Div. 4th Dep't Case No. CA 23-00306);
- on May 3, 2023, filing an opening brief in *Zhang v. City of New York* (N.Y. State App. Div. 1st Dep't Case Nos. 2022-03411, 2022-05033, and 2023-01347) (three consolidated appeals);
- by May 11, 2023, filing a reply brief in *Hardy v. Hummel* (N.Y. State App. Div. 3d Dep't Case No. 535431);
- on May 11, 2023, presenting oral argument on a petition for review of administrative agency action in *575 4th Ave., LLC v. New York City Dep't of Env't'l Protection* (N.Y. State Sup. Ct. Queens County Case No. 725911/2022);



- by May 30, 2023, filing an opening brief in *Da Silva Plastic & Reconstructive Surgery, P.C. v. UnitedHealthcare Ins. Co. of New York, Inc.* (N.Y. State App. Div. 2d Dep't Case No. 2022-07064);
- by June 12, 2023, filing a reply brief in *Mackiewicz v. Autumn View Health Care Facility* (N.Y. State App. Div. 4th Dep't Case No. CA 23-00306);
- by June 16, 2023, filing an opening brief in *State of New York v. Monroe* (N.Y. State App. Div. 3d Dep't Case No. 113628); and
- by June 28, 2023, filing an opening brief in *William Metrose Ltd. Builder/Developer v. Waste Management of New York, L.L.C.* (N.Y. State App. Div. 4th Dep't Case No. CA 23-00005).

*Third*, the requested additional time is critical to make up for unanticipated inroads on my work schedule caused by a family member's sudden and unexpected illness that arose and persisted for a significant amount of time during April 2023.

I have consulted with counsel for petitioners, who advises me that petitioners would consent to a 20-day extension of the response date, *i.e.*, until June 5, 2023, but that they do not consent to the requested extension of June 30, 2023, out of a concern for obtaining timely relief. However, upon information and belief, the difference between those two dates will not make a material difference in that regard. According to the case distribution schedule published on the Court's website, petitions will be considered at conferences held before the summer recess only if they are fully briefed by June 6, 2023; petitions that become fully briefed between June 7, 2023 and mid-September 2023 will all be considered at the first conference held after the summer recess.<sup>1</sup> Thus, inasmuch as petitioners will need adequate time to prepare and file a reply brief, the petition will not be considered until the first post-recess conference either way. Moreover, even were the petition considered *and*

---

<sup>1</sup> See U.S. Supreme Court, *Case Distribution Schedule – October Term 2022*, at 1, 5–6, <https://www.supremecourt.gov/casedistribution/casedistributionschedule2022.pdf> (last visited May 5, 2023). The scheduling analysis is somewhat different for *in forma pauperis* petitions and petitions that have already been considered at a prior conference, *see id.*, but neither of those situations is applicable here.

Hon. Scott S. Harris  
May 5, 2023  
Page 4

HARRIS BEACH <sup>PLLC</sup>  
ATTORNEYS AT LAW

*granted* before the summer recess, the case would not be argued and decided on the merits until October Term 2023 regardless.

For the foregoing reasons, the requested extension of the deadline for filing the brief in opposition until June 30, 2023 should be granted.

Respectfully submitted,



Brian D. Ginsberg  
*Counsel of Record for Respondents*

cc: Counsel for petitioners  
(via e-mail and overnight delivery)